

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

RAYMOND LEE WILBORN,

Appellant

v.

TRACEY LEE WILBORN.

Respondent

DOCKET NUMBER WD76447

DATE: SEPTEMBER 16, 2014

Appeal From:

Circuit Court of Randolph County, MO
The Honorable Mason Robert Gebhardt, Judge

Appellate Judges:

Division Two
Victor C. Howard PJ., James E. Welsh, Anthony Rex Gabbert JJ.

Attorneys:

Julie Danielle Hixson-Lambson, St. Louis, Missouri, Counsel for Appellant,

Attorneys:

Douglas Fowler Pugh, Columbia, Missouri, Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

RAYMOND LEE WILBORN,

Appellant,

v.

TRACEY LEE WILBORN,

Respondent.

WD76447

Randolph County

Before Division Two Judges: Victor C. Howard PJ., James E. Welsh, Anthony Rex Gabbert JJ.

Raymond Lee Wilborn (Husband) appeals the circuit court's judgment dissolving his marriage to Tracey Lee Wilborn (Wife). Husband contends that the circuit court: (1) misapplied the law in classifying as marital property and awarding \$19,967 which represented Husband's contribution to his railroad retirement pension during the marriage because 45 U.S.C.A. § 231m preempts state action and explicitly prohibits courts from anticipating the receipt of any such retirement benefit, forbids the court from entering any "offset" award which considers any present value or anticipated value of Husband's pension, and because the court treated Husband's railroad retirement as a private pension with an ascertainable value which could be awarded or divided and none such exists; (2) misapplied the law in holding that Wife's pre-marital contributions to the marital residence were her separate, non-marital property not subject to division because the court's reliance on the "source of funds" rule was misplaced; (3) abused its discretion and erroneously applied the law in entering a parenting plan because the court's provisions regarding summer parenting time were vague, indefinite, and incapable of enforcement; (4) abused its discretion and erroneously applied the law in entering its parenting time schedule for parenting time during the school year, and; (5) erroneously applied the law in awarding the federal dependency tax exemptions because it did not follow federal guidelines and order the parents to complete the necessary IRS form to relinquish rights to the exemption.

AFFIRMED

Division Two holds:

- (1) The circuit court did not err and misapply the law in classifying as marital property and considering in its total distribution \$19,967 which represented Husband's contribution to his railroad retirement pension during the marriage because the record reflects that the \$19,967 in contributions are subject to division pursuant to 45 U.S.C.A. § 231m(b).

- (2) Husband failed to preserve and, therefore, waived for appellate review his claim that the court erred and misapplied the law in holding that Wife's pre-marital contributions to the marital residence were her separate, non-marital property.
- (3) The circuit court did not abuse its discretion or erroneously apply the law with regard to the court's provisions for summer parenting time in the parenting plan. Although the court's order could have been more explicit, the court's intent is apparent from the context of the parenting plan and, therefore, the court's provisions are not so vague and indefinite that they are incapable of enforcement.
- (4) The court did not abuse its discretion or erroneously apply the law in entering its parenting time schedule for parenting time during the school year. The record reflects that the court carefully and deliberately considered the matter and the court's determination was not arbitrary, unreasonable, or illogical given the circumstances.
- (5) The circuit court's judgment is modified to reflect that the parents are to complete the necessary IRS form to relinquish rights to the federal dependency tax exemptions.

Opinion by Anthony Rex Gabbert, Judge

Date: 9/16/14

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